

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Wednesday, August 6, 2014
	)	
Defendants.	)	(3:00 p.m. to 4:03 p.m.)

STATUS CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Officer:	Adrian Perez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

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APPEARANCES FOR:

## Plaintiffs:

ARMAND DERFNER, ESQ.  
P.O. Box 600  
Charleston, SC 29402

CHAD W. DUNN, ESQ.  
KEMBEL SCOTT BRAZIL, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway, Suite 530  
Houston, TX 77068

J. GERALD HEBERT, ESQ.  
191 Somervelle Street, Suite 405  
Alexandria, Virginia 22304

EMMA SIMPSON, ESQ.

Mexican American  
Legislative Caucus,  
et al.:

EZRA D. ROSENBERG, ESQ.  
Dechert, LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540-6531

Texas League of Young  
Voters Education Fund:  
NAACP Legal Defendant and Educational

RYAN HAYGOOD, ESQ.  
KELLY DUNBAR, ESQ.  
Funds, Inc.  
40 Rector Street  
5th Floor  
New York, NY 10006

## State of Texas:

JOHN BARRET SCOTT, ESQ.  
Scott, Yung, L.L.P.  
208 N. Market Street  
Suite 200  
Dallas, TX 75202

JOHN REED CLAY, JR., ESQ.  
Office of the Attorney General  
P.O. Box 12548  
MC001  
Austin, TX 78711

LINDSEY WOLF, ESQ.  
BEN DONNELL, ESQ.

APPEARANCES FOR:

(CONTINUED)

United States  
of America:

ANNA BALDWIN, ESQ.  
BRADLEY HEARD, ESQ.  
U. S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB Room 7125  
Washington, DC 20530

Texas Association of  
Hispanic County Judges  
and County  
Commissioners:

ROLANDO L. RIOS, ESQ.  
115 E. Travis  
Suite 1654  
San Antonio, TX 78205

Oscar Ortiz, et al.:

ROBERT DOGGETT, ESQ.  
Texas Rio Grande Legal Aid  
4920 North IH 35  
Austin, TX 78751

Corpus Christi, Texas; Wednesday, August 6, 2014; 3:00 p.m.

(Call to Order)

**THE COURT:** The Court calls Cause Number 2-13-193,  
*Veasey, et al., versus Perry, et al.*

**THE CLERK:** Your Honor, for the individual Veaseys,  
we have Mr. Dunn, Mr. Derfner, Mr. Hebert, Mr. Brazil, and  
Ms. Simpson.

For the United States, we have Ms. Baldwin and  
Mr. Heard.

For the Mexican American Legislative Caucus,  
Mr. Rosenberg.

For Ortiz, et al., Mr. Doggett.

For the Association of Hispanic County Judges,  
Mr. Rios.

For the League of Young Voters, Mr. Haygood and  
Mr. Dunbar.

For the State of Texas present in the courtroom,  
Mr. Scott, Mr. Clay, Mr. Donnell; and present on the line,  
Ms. Wolf.

And nobody is appearing for the nonparty senators or  
representatives.

**THE COURT:** All right. What is that?

Okay. I guess first before the Court is the  
Defendants' Motion to Compel Documents Regarding Election  
Crimes and Voter Fraud, and that was DE 441.

1           Mr. Scott? I don't know. I think you all were  
2 conferring on that still. I did get a response from the  
3 Government.

4           **MR. SCOTT:** I don't believe it got worked out, but  
5 Lindsey Wolf is going to take the first part of that argument  
6 for the State of Texas, your Honor.

7           **THE COURT:** Okay.

8           **MS. WOLF:** Your Honor, this is Lindsey Wolf. I'm  
9 appearing telephonically.

10           We've had some conversations with the United States  
11 regarding that particular Motion. Unfortunately, we haven't  
12 been able to come to a resolution on that Motion. And there  
13 are some issues which were related to that Motion, which are  
14 also tied in to some clarity I think both parties may be  
15 seeking with respect to your Honor's ruling on the 30(b)(6)  
16 Motion, because I think the issues are kind of tied in  
17 together.

18           So if it works, what I may do is just sort of lay out  
19 what clarity we're seeking on the 30(b)(6) Motion and then  
20 segue into --

21           **THE COURT:** Okay. And I do see --

22           **MS. WOLF:** -- the Motion --

23           **THE COURT:** -- that as a different -- deposing  
24 someone versus some document production -- I mean, I -- I do  
25 think there's some difference there.

1 But you can proceed.

2 MS. WOLF: Okay. So, basically, the clarity that  
3 we're seeking is I think that D.O.J. has an understanding that  
4 your Honor's ruling limited us -- originally had an  
5 understanding that your Honor's ruling limited us to asking  
6 questions regarding the Public Integrity Reports that were  
7 submitted to Congress.

8 And our reading of your ruling and also some comments  
9 that were made at the July 24th hearing was that, instead, we  
10 would be able to inquire as to generally factual and  
11 ministerial information regarding records or information that  
12 the United States kept regarding voter fraud and election  
13 fraud.

14 And I've had some conversations with Mr. Heard on  
15 this particular topic area, and I kind of think -- and I don't  
16 want to put words into his mouth -- but I think we're both kind  
17 of at the place where it -- with the documents that we have in  
18 our possession so far, such as the Declaration from Mr. Pilger,  
19 who's the chief of the Election Crime Section of the Public  
20 Integrity Section -- well, and for example, the ballot  
21 integrity training materials -- that we would be able to  
22 inquire as to where the numbers were derived from in the type  
23 of information that was in those particular reports.

24 And the clarity that we're seeking from your Honor is  
25 in the event that we were to get more documents from the United

1 States as a result of any resolution, or however the Court  
2 rules regarding the Motion to Compel, that your Honor's ruling  
3 regarding our ability to inquire generally into factual and  
4 ministerial information regarding voter fraud and election  
5 crime would extend to, for example, those documents or those  
6 particular topic areas, and would not just be limited to the  
7 Public Integrity Reports themselves.

8 **THE COURT:** That would be my understanding, but I'll  
9 certainly hear from Mr. Heard, if he has a different take on  
10 that.

11 **MR. HEARD:** Good afternoon, your Honor. This is Brad  
12 Heard for the United States.

13 I don't think (indiscernible) Ms. Wolf and I did have  
14 a conversation earlier this morning, or maybe it was earlier  
15 this afternoon, about this topic.

16 Our understanding of the Court's Order with respect  
17 to the 30(b)(6) deposition is reflected in the exhibit that is  
18 attached to our Response to this pending Motion.

19 And we did contemplate that if additional documents  
20 were ordered by the Court in regard to Defendants' Motion to  
21 Compel, that, of course, the Defendants would be able to  
22 inquire into the record keeping related matters that the Court  
23 had identified earlier in its July 24th Order with respect to  
24 those additional documents.

25 So I don't -- I don't know that there's a fundamental

1 misunderstanding as between what's set forth in our letter of  
2 August 1st, which is an exhibit to the Motion, and what  
3 Ms. Lindsey just -- I mean, what Ms. Wolf just described.

4 **THE COURT:** Okay. So can we get to the Motion, then?

5 **MS. WOLF:** Yes, your Honor. We can move on to the  
6 Motion.

7 I think generally (indiscernible) -- I apologize for  
8 the echo.

9 I think generally where we are (indiscernible)  
10 Motion --

11 **THE COURT:** Yeah, hold -- hold --

12 **MS. WOLF:** -- is that we --

13 **THE CLERK:** Ms. Wolf, you're echoing.

14 **MS. WOLF:** I apologize. I'm trying to figure out --

15 **THE COURT:** You're fine now. I think you're fine  
16 now.

17 **MS. WOLF:** Okay, your Honor. I won't move from this  
18 spot. I apologize for that.

19 The United States, which they've laid out in their  
20 Response to our Motion to Compel, has offered to do what we  
21 view as a very limited search in order to give us some  
22 information regarding information that they maintain on  
23 election crimes and voting fraud.

24 And what they've offered to do is search two  
25 databases that are maintained by the Criminal Division of the

1 Department of Justice, and then another which is maintained by  
2 the Executive Office of the United States Attorney's Office.

3 And the key concern the Defendants have with the  
4 search that the United States has offered to do is that,  
5 despite the fact that I understand that those databases contain  
6 information regarding investigations of election crimes and  
7 voter fraud that, for example, the United States Attorney's  
8 Offices or the Criminal Division of the Department of Justice  
9 have done, the United States is not willing to give us any  
10 information regarding the investigations. They're only willing  
11 to give us information regarding the actual prosecuted, filed,  
12 docketed cases that have been completed.

13 And that does not provide us with a complete picture  
14 of the total universe of the incidence and the allegations of  
15 voter fraud.

16 Separate and apart from the limits that the United  
17 States intends to impose on those -- what I'll refer to as the  
18 LINES (phonetic) and ACTS (phonetic) databases, separate and  
19 apart from those limits, that includes a very, very large body  
20 of information, which we understand would come from the FBI.

21 For example, I know we attached to our Motion a  
22 couple of exhibits regarding FBI investigations into voter  
23 fraud and election crimes. And my understanding is that those  
24 databases would not cover FBI investigations and -- again,  
25 which would limit severely the universe of information we would

1 be able to receive in regards to voter fraud and election  
2 crimes.

3           Since we aren't able to -- since there are  
4 limitations on our inquiries with respect to a deponent,  
5 basically all we're seeking is we want to know, you know, how  
6 many prosecutions, the type and location of those prosecutions  
7 that are currently taking place, how many prosecutions and the  
8 type that have taken place in the past, and we'd like to know  
9 the universe of the allegations regarding election crimes and  
10 voter fraud, including the type, the place, and the time.

11           And with respect to investigations that were  
12 currently ongoing, the only detail we would need is type and  
13 place.

14           We don't need any other information. We don't need,  
15 you know, the substance of the particular allegations  
16 themselves. And I think, from a starting point, the fact that  
17 that information -- we understand, at least as respects the  
18 Criminal Division and the U.S. Attorney's Offices -- is  
19 available in LINES and ACTS, and the United States has  
20 represented in its Pleadings that searches of LINES and ACTS  
21 are not overly burdensome for the do -- for them to do; and, in  
22 fact, seem pretty easy for them to do just in terms of what  
23 they've offered to do with respect to the filed cases.

24           And I think also it's not clear, you know, whether  
25 the database that's maintained by the Executive Office of the

1 United States Attorney actually, you know, contains all of the  
2 information which would be regarding the stuff that United  
3 States Attorney's Offices may get but don't necessarily open a  
4 case file for that's then reported to a national database.

5 And I think there's just information out there that  
6 wouldn't necessarily be captured by these databases. I think  
7 the FBI is probably the biggest sort of nucleus for that, but  
8 there could be other information that's just not captured.

9 And I think an important thing to note is the O.A.G.  
10 subpoena that was served by the Texas League of Young Voters,  
11 that had asked from Mr. Mitchell -- Commander Mitchell, who is  
12 the O.A.G. designee, information regarding complaints,  
13 allegations, referrals, or investigations, charges, and/or  
14 prosecutions --

15 **THE COURT:** Wait, wait. Who are you talking about  
16 now? Are you still directing this to the United States?

17 **MS. WOLF:** Yes, your Honor. I'm --

18 **THE COURT:** Okay.

19 **MS. WOLF:** I'm trying to refer your Honor -- your  
20 Honor granted the Texas League's Motion to Compel the O.A.G. to  
21 produce a deponent, and the point I'm trying to make is that  
22 the subject matter in the subpoena for that particular  
23 deponent, which were relating to voter fraud, regarded things  
24 beyond actual files, prosecuted cases. It also involved  
25 referrals for investigations and investigations.

1           And so I think, you know, they've asked for that  
2 universe of documents. The Court has granted that universe of  
3 documents and testimony. And so, you know, we're basically  
4 asking for the same thing. We don't want to be limited to  
5 prosecuted and filed cases. I think there are several reasons  
6 that a case could not be prosecuted. It may be a resource  
7 issue. It's not necessarily that the fact that the cases were  
8 not -- were not strong or were not, you know, worthy of proof.

9           And so I think that we would be entitled to that type  
10 of information, especially because we're not getting deposition  
11 testimony on these substantive matters. We don't have a  
12 complete universe of documents. We don't have a complete  
13 universe of numbers.

14           I understand that, you know, a witness, you know, may  
15 not be able to testify to specific numbers, and so we're just  
16 asking for, you know, the broadest universe of information  
17 really on a very basic level, but we do need to get a handle on  
18 the particular universe of all of the types of investigations  
19 or information that the United States maintains regarding voter  
20 fraud and election crime.

21           And I think, you know, turning now to the point --  
22 they make an argument that it would be unduly burdensome to run  
23 a broader search than what they're offering to do, but the fact  
24 that it's unduly burdensome to run that search to me indicates  
25 that that does mean that there's evidence out there that is

1 relevant and that would be -- to which the Defendants would be  
2 entitled to.

3 And I just -- you know, so we're kind of in a  
4 position where we can't get the information from a deposition.  
5 We're not being offered the information from a database that's  
6 at least very searchable. And, on top of that, the United  
7 States has not offered to search anything beyond those two  
8 particular databases.

9 And on top of that, the searches that they proposed  
10 to do of those two databases are only going back, I believe, to  
11 2004. So it's only going back a decade.

12 **THE COURT:** But isn't that what you all asked for, to  
13 go back to '04, or no?

14 **MS. WOLF:** We asked for '04 with respect to the  
15 30(b)(6) notice, but actually our RFPs did not (indiscernible)  
16 limitation on them.

17 **THE COURT:** All right. Mr. Heard, are you speaking  
18 for the Government, or Ms. Baldwin?

19 **MR. HEARD:** Yes, ma'am. Yes, your Honor. I'm  
20 handling this particular Motion.

21 Your Honor, as we -- as we admitted in our filing,  
22 the original Document Request that's the subject of this Motion  
23 is -- was hopelessly overbroad and unlimited in time or  
24 (indiscernible) --

25 **THE COURT:** Tell me what the Government is willing to

1 do, and what that covers, and what would not be covered by what  
2 the Government is agreeing to produce, I guess.

3           **MR. HEARD:** What we've offered in our letter of  
4 August 1st is to provide the Defendants -- there are two  
5 litigating components of the Department of Justice that  
6 specifically bring election crimes other than sort of voter  
7 intimidation-like crimes. But anything related to election  
8 crimes and election fraud are brought by either the Criminal  
9 Division, Public Integrity Section, or the Office of the United  
10 States Attorney.

11           We have offered to search the databases for those two  
12 components of the Department of Justice and provide to them  
13 information relating to the prosecution -- the election crime  
14 related prosecutions that have occurred from 2004 to the  
15 present.

16           What we have said that we are not willing to provide  
17 -- the databases in question do provide information on ongoing  
18 and closed investigations, because the Department needs that  
19 information for its own internal purposes. But we're -- but  
20 that information related to the ongoing -- particular the  
21 ongoing investigations, but even as to closed investigations,  
22 touches off a whole bunch of privileges related to  
23 investigations and related to prosecutorial --

24           **THE COURT:** We're not --

25           **MR. HEARD:** -- discretion --

1           **THE COURT:** I don't know -- I don't know that we're  
2 now started looking at privileged information here, and then  
3 that may be another fight between you guys.

4           I'm just trying to figure out what's the Government  
5 trying -- or agreeing to produce, what would be excluded? I  
6 mean, I'm not getting into privileges right now, because --

7           **MR. HEARD:** Okay.

8           **THE COURT:** -- obviously, they shouldn't get  
9 privileged material.

10          Now, if you all are going to fight about --

11          **MR. HEARD:** Okay.

12          **THE COURT:** -- what's privileged and what's not,  
13 that's -- I don't think that's for right now.

14          **MR. HEARD:** Okay. Well, what we have offered to  
15 produce to them is for the previous ten years, from 2004 to the  
16 present, which is the -- which is the limitation that they had  
17 offered for their deposition testimony --

18          **THE COURT:** Which I think is appropriate. Is there a  
19 problem -- is there a reason we need to go past '04, Ms. Wolf  
20 or Mr. Scott?

21          **MR. SCOTT:** Well, your Honor, I think if we can limit  
22 the O.A.G.'s deposition so that we know that we're dealing  
23 apples to apples, that's fine.

24          **THE COURT:** What, and it wasn't limited, or what?  
25 Or --

1           **MR. SCOTT:** I don't believe it was limited --

2           **THE COURT:** Or can we agree --

3           **MR. SCOTT:** -- to 2004.

4           **THE COURT:** -- to limit it? Who would that be,  
5 Mr. Haygood, I guess?

6           **MR. SCOTT:** It's -- theirs go back to 2000 is on the  
7 depo notice. So if we can get it to 2004 --

8           **THE COURT:** Okay.

9           **MR. SCOTT:** -- I think that cures the problem, at  
10 least to that extent on the time frame.

11           **THE COURT:** I don't know. Can we agree on going back  
12 to '04? I believe, Mr. Haygood, your -- when I ruled on your  
13 Motion, your request was going back to 2000?

14           Do you recall, or do you want to --

15           **MR. HAYGOOD:** That's right, your Honor.

16           **THE COURT:** -- speak on that?

17           **MR. HAYGOOD:** It's back -- it's back to 2000.

18           **THE COURT:** Okay. I guess they're just saying they  
19 want what the other parties are getting to 2000 -- or everybody  
20 '04 or everybody 2000.

21           Can we have an agreement or not?

22           **(No audible response)**

23           Anybody can --

24           **MR. HEARD:** The United States would agree to 2004 is  
25 relevant. I hope a decade is enough.

1           **THE COURT:** Mr. Haygood?

2           **MR. HAYGOOD:** Your Honor, we had asked for 2000. I  
3 think that we -- I think that we could agree to 2004.

4           **THE COURT:** Okay. I think so, too. If there's a  
5 particular problem you think about, we can certainly get back  
6 on the phone.

7           **MR. SCOTT:** And, your Honor, would we have the same  
8 scope, I guess, agreement?

9           What we're trying to do is make sure that we have the  
10 ability to defend, I guess, any of the representations, so I  
11 think the scope that the folks over at -- let's see who  
12 actually sent this -- it was Mr. Haygood's folks that sent this  
13 depo notice. That's really the scope of documents that we're  
14 trying to get from D.O.J.

15           **THE COURT:** Well, and --

16           **MR. SCOTT:** And I think Ms. Wolf identified that  
17 already in our -- in her argument to the Court.

18           **THE COURT:** No, and I'm trying to figure out -- and  
19 he had gotten started, and I keep interrupting him. But,  
20 Mr. Heard, you had started on what the Government is agreeing  
21 to produce, what would be excluded, what can we do.

22           So you can proceed. I'm sorry.

23           **MR. HEARD:** That's okay, your Honor. So what the  
24 United States has agreed to produce to the Defendants is a list  
25 of the prosecutions that have been initiated, whether by

1 indictment or information, from 2004 to the present; and to  
2 provide certain details with respect to those prosecutions, you  
3 know, basic details, the case name, case number, the district  
4 that the case arises in -- that type of thing.

5           The matters -- the only matters that would be  
6 excluded from that list are matters that are under seal with a  
7 respective court. But, otherwise, the charged cases between  
8 '04 and the present are what the United States has agreed --  
9 both for the Criminal Division, Public Integrity Section, and  
10 for the Executive Office for United States Attorneys.

11           So they would get all of that information, which does  
12 comport with the broadened scope that the Court had identified  
13 in its July 24th Order. In other words, we're not just talking  
14 about in-person voter impersonation. We're talking about any  
15 type of election crime other than voter intimidation, that  
16 stuff, which is not a fraud issue.

17           And so those things would be produced to the  
18 Defendants.

19           What we are not agreeing to produce is information  
20 relating to investigations, closed or open, that did not result  
21 in the initiation of a prosecution by the United States. And  
22 we're not producing -- we're not willing to produce that. We  
23 believe it's privileged, which the Court has put a pin in. So  
24 I won't go further there.

25           But that's the universe that we've agreed to -- that

1 the United States has agreed to.

2           **THE COURT:** Okay. So in the defense -- so that this  
3 is including -- this is -- will be excluding information from  
4 the FBI, et cetera, and so we're not getting a whole big  
5 category of documents that would be relevant. What's the  
6 Government's response?

7           **MR. HEARD:** Well, the only -- the only two components  
8 of the Department of Justice that are authorized to prosecute  
9 -- the FBI is not a litigating component of D.O.J.

10           **THE COURT:** Well, they're saying --

11           **MR. HEARD:** (Indiscernible) --

12           **THE COURT:** Right, you're agreeing to produce some  
13 prosecuting documents, or whatever it may be, and the Defense  
14 is saying, "We need more than that."

15           What the Government is seeking to produce, what is  
16 that going to do in terms of what's -- it's just going to  
17 provide information on prosecutions?

18           **MR. HEARD:** What the Government is seeking to produce  
19 would provide information on prosecutions only, not -- not  
20 investigations, closed or open -- again, because investigations  
21 are privileged under a variety of government privileges.

22           And so we are trying to be as cooperative as possible  
23 without running into, you know, privileged matters and  
24 prosecutorial discretion matters.

25           And so those -- I mean, so if Defendants want a

1 picture of what types of election crimes the Government has  
2 prosecuted over the past decade, the real relevant information  
3 to that is what we have already offered to provide --

4 **THE COURT:** I know, but you --

5 **MR. HEARD:** -- them, which is --

6 **THE COURT:** -- keeping using the word "prosecution."  
7 That's what they're taking issue with. It sounds like the  
8 Defendants are wanting more than prosecution, correct?

9 **MS. WOLF:** Yes, your Honor. That's correct. I think  
10 we would like allegations, referrals, and investigations --  
11 frankly, we'd like everything that the Plaintiffs are getting  
12 from the O.A.G., which is -- it has the same governmental  
13 privileges as the United States.

14 And I would just add to that that we're not  
15 necessarily seeking substantive information that would reveal  
16 privilege. I think there's a way that you could report  
17 information in a very general manner, which would lay out the  
18 number of instances and a very, very general description of  
19 what the type of incidence is while still protecting the  
20 privilege, your Honor.

21 **MR. HEARD:** I mean, your Honor, it's certainly  
22 possible for the United States. We would still object to it.  
23 It's certainly possible for the United States to run a report  
24 of raw numbers of open and closed investigations.

25 But if you get much further than that -- if you get

1 into the type of election crimes, where they're being  
2 investigated, you know, that type of information -- whether  
3 current or past -- it intrudes upon the prosecutorial function  
4 of the Department. And that is why we have been so vehemently  
5 objecting to producing information related to investigations.

6 Again, investigations that don't result in  
7 prosecutions -- if the Government investigates something and  
8 closes it, it's made a determination -- a prosecutorial  
9 determination that the charge should not be brought. And that  
10 element of prosecutorial discretion is, again, an element  
11 that's not typically before the Court, and one that is not  
12 probative of anything regarding the election crimes that are  
13 brought by the United States.

14 **THE COURT:** All right. Ms. Wolf?

15 **MS. WOLF:** Your Honor, I think my response to that  
16 would be that there are several -- sorry. It's echoing again.

17 There are several reasons why a prosecution could not  
18 go forward, and we're not seeking to inquire as to why those  
19 decisions were made. We're simply stating that there could be  
20 a prosecution or an investigation that had, you know, actual --

21 **THE COURT:** Okay. I'm sorry. We're not being able  
22 to take the record. You're -- there's an echo --

23 **MS. WOLF:** Oh, I'm so sorry. I'm trying to shuffle  
24 some things around so that I can avoid -- is it okay now?

25 **THE CLERK:** Well, there's still an echo.

1           **MR. SCOTT:** Your Honor, since we're having technical  
2 difficulties, I'll try and explain what Ms. Wolf is explaining.

3           I think, at bottom, what we want is an apples-to-  
4 apples comparison. And what they have asked of the O.A.G. is  
5 complaints, referrals, and investigations. What we're being  
6 offered -- in addition to, you know, closed files and  
7 prosecutions that are currently public.

8           What we're being offered from them is only those  
9 latter two categories.

10          And I think it boils down to two things: they're not  
11 looking in all the right places within the Department of  
12 Justice and they're not looking for all the right things.

13          They're not looking in the various U.S. Attorney's  
14 Offices, which are likely to be the sort of locus for referrals  
15 and complaints. They're just searching the Executive Office of  
16 the U.S. Attorney's Office, which is at Main Justice in D.C.,  
17 where the status of ongoing matters is located.

18          And so with respect to the types of things we're  
19 looking for, it's the complaints, and referrals, and  
20 allegations that are -- and investigations -- that seem to be  
21 missing.

22          And that's why searching the U.S. Attorney's Office  
23 and the FBI is so important.

24           **THE COURT:** All right. Mr. Heard --

25           **MR. HEARD:** Sure.

1           **THE COURT:** -- why shouldn't they have access to the  
2 same information that the Plaintiffs have requested?

3           **MR. HEARD:** Your Honor, the -- let me clarify one  
4 point first. The -- Mr. -- I don't know who that was speaking.  
5 But the database searches that we've offered to run cover all  
6 United States Attorney's Offices, and --

7           **THE COURT:** But that's just for prosecution, correct?

8           **MR. HEARD:** Right. Well, the --

9           **THE COURT:** Okay.

10          **MR. HEARD:** -- database in question covers all United  
11 States Attorney's Offices, whether we're talking investigations  
12 or prosecutions. The database in question covers all United  
13 States Attorney's Offices and the Public Integrity Section --  
14 well, the entire Criminal Division, but --

15          **THE COURT:** So what you're agreeing --

16          **MR. HEARD:** -- (indiscernible) --

17          **THE COURT:** -- to produce is prosecutions and  
18 investigations?

19          **MR. HEARD:** No, no. (Indiscernible) --

20          **THE COURT:** Okay. Well, then answer my question.  
21 Why should the Defendants not get what the Plaintiffs have  
22 requested?

23          **MR. HEARD:** Your Honor, from the United States'  
24 perspective, the requests for investigatory materials is a  
25 privilege request --

1           **THE COURT:** And it's not --

2           **MR. HEARD:** -- (indiscernible) --

3           **THE COURT:** -- a privilege for the State?

4           **MR. HEARD:** I'm not -- I'm not familiar with the  
5 State's arguments or whether they've challenged -- whether  
6 they've raised those privilege issues.

7           **THE COURT:** I think they did.

8           **MR. HEARD:** However, the United -- well, I'm not --  
9 I'm probably the newest --

10          **THE COURT:** Okay. You --

11          **MR. HEARD:** -- member of (indiscernible) --

12          **THE COURT:** -- know what? It sounds like --

13          **MR. HEARD:** And --

14          **THE COURT:** I've told you all this from the  
15 beginning. What's good for one side is good for the other.

16          **MR. HEARD:** And -- and I --

17          **THE COURT:** So I think privilege --

18          **MR. HEARD:** -- (indiscernible) --

19          **THE COURT:** -- is applied to all sides, the State --  
20 I don't recall specifically. I remember addressing or reading  
21 -- and we never addressed them -- some issues that the State  
22 raised as privileges. So --

23          **MR. HEARD:** Your Honor, I don't believe the United  
24 States has asked for that type of information  
25 (indiscernible) --

1           **THE COURT:** Well, somebody did. Who asked for it?

2           **MR. DUNBAR:** Your Honor, this is Kelly --

3           **MR. HEARD:** I'm not sure --

4           **MR. DUNBAR:** Your Honor, this is Kelly -- Kelly  
5 Dunbar for the Texas League of Young Voters. I argued the  
6 Motion, that Motion to Compel, I believe, that your Honor was  
7 referring to last week or two weeks ago.

8           And I just wanted to clarify two quick points for the  
9 record.

10           The first is that although our initial subpoena  
11 request for documents of O.A.G. did go back to the early part  
12 of 2000, that we have -- you may also recall that we agreed to  
13 the State's offer to stipulate that we would rely on  
14 Mr. Mitchell's previous testimony in lieu of any document,  
15 discovery, or deposition discovery pre the enactment of SB 14.

16           The second point I just wanted to add with respect to  
17 the state of the record on this point is that the Office of the  
18 Attorney General to date has not produced to us a single  
19 document --

20           **THE COURT:** Well, and that's --

21           **MR. DUNBAR:** -- that relates to --

22           **THE COURT:** -- a different issue --

23           **MR. DUNBAR:** That relates to --

24           **THE COURT:** -- that I don't mind addressing. I --  
25 certainly, we need to. We're about a month out from trial.

1           But I'm just saying why shouldn't the Defendants get  
2 the same type of information that the Plaintiff has requested  
3 and the Court has allowed?

4           **MR. HEARD:** Well, again, your Honor, the Plaintiff,  
5 the United States, has not requested that information from  
6 Texas. And the Plaintiff, the United States --

7           **THE COURT:** Okay. Well, tell me then anyway. Why,  
8 if I've allowed certain Plaintiffs -- because you all are going  
9 to be on one side trying this together, so I'm sure you'd have  
10 access to whatever the other Plaintiffs have received -- why  
11 shouldn't the Defendants then have that same information?

12           **MR. HEARD:** So as an initial matter, your Honor,  
13 the --

14           **THE COURT:** No, no. Answer my question, because I've  
15 been at this for a little bit, and nobody is really answering  
16 that.

17           **MR. HEARD:** Right. So, your Honor, I -- I don't know  
18 that I could answer the Court's question as far as why a  
19 request that the United States hasn't made of Texas, why the  
20 Court -- I mean, the -- we -- the United States has a  
21 governmental interest in protecting its investigatory --

22           **THE COURT:** As does Texas.

23           **MR. HEARD:** -- files.

24           **THE COURT:** As does --

25           **MR. HEARD:** And -- and --

1           **THE COURT:** -- Texas.

2           **MR. HEARD:** And -- well, and -- and I have not heard  
3 Texas's arguments, or -- and I don't know whether the Court has  
4 ruled on that.

5           **THE COURT:** I thought I --

6           **MR. HEARD:** But from the United --

7           **THE COURT:** -- did.

8           **MR. HEARD:** But from the United States' perspective,  
9 I mean, we have an obligation to protect our own governmental  
10 interest, and this is the Motion before the Court.

11           And so -- and so for this -- and it's not as if we  
12 are asking for comparable information from the State of Texas,  
13 from one government to another. We are not asking for that  
14 information, and we don't believe that we should be required to  
15 provide that --

16           **THE COURT:** Okay. I'm going to backtrack. Let me  
17 backtrack.

18           What did the Plaintiffs, and tell me which ones,  
19 request of the Defendants in terms of this -- prosecutions,  
20 referrals, investigations -- what was requested? What did the  
21 Court do? Who requested it? What's been provided or going to  
22 be provided, per the Court's Order, and then we'll work  
23 backwards.

24           **MR. CLAY:** Your Honor, I've got their 30(b)(6) before  
25 us, and the Document Request is also here, and I'd have to comb

1 through it to find the exact language.

2 But what they're seeking is:

3 "Any and all complaints, allegations, referrals for  
4 investigation, investigations, charges, and/or  
5 prosecutions either through the Texas Attorney  
6 General's Office or in conjunction with local,  
7 county, or municipal law enforcement and  
8 prosecutorial authorities concerning alleged, actual,  
9 or attempted voting and/or election fraud occurring  
10 within the State of Texas from January 1st, 2000,"  
11 which has been amended, "to the present, including,"  
12 and then, you know, they go on to list the --

13 **THE COURT:** And did Texas assert some privileges?

14 **MR. CLAY:** Yes.

15 **THE COURT:** Which ones?

16 **MR. CLAY:** Mostly the law enforcement privilege, but  
17 I think that we worked with -- this is the Texas League of  
18 Young Voters Education Fund that has made the request. And  
19 just as sort of an interjection here, it's a -- and this was in  
20 our Motion -- it's a -- I think this is obviously a  
21 coordinated, you know, move on their part to not have the  
22 United States ask for it, because the United States is going to  
23 have to give it up.

24 This Court has ruled that they have a common interest  
25 privilege. And so as you just pointed out, your Honor, this

1 stuff is going to be -- whatever we give them is equally  
2 available to everyone on the other side, including the United  
3 States. And that -- as far as I understand the common interest  
4 privilege, that's how it's going to work.

5 And so for them to suggest that they haven't asked  
6 for it is, you know, I'm -- they have, and they're going to get  
7 it.

8 And so all we're asking for is that we have access to  
9 the same stuff, and I think that there's a way to do it. And I  
10 think that this is what we worked on with the Texas League to  
11 where we give it at a level of generality that doesn't  
12 implicate the law enforcement privilege, or sensitive  
13 prosecutorial, or investigatorial information.

14 And that's providing reports -- even if generated  
15 solely for the purpose of this litigation -- that explained  
16 what is happening, where the referrals are, what the referrals  
17 are about, when they were, what type of crime it was, and  
18 that's it. Nothing more.

19 **MR. HEARD:** Your Honor, Brad Heard for the United  
20 States.

21 It seems that, from -- and, again, I don't know who  
22 was speaking, but it seems from Texas's position they have  
23 asserted the same law enforcement objections that we have, but  
24 they are apparently willing to waive them (indiscernible) --

25 **THE COURT:** No, no. They're not waiving them.

1 They're working with the other party to make sure whatever is  
2 produced doesn't cross that line.

3 **MR. CLAY:** Yeah, we're definitely not waiving them.  
4 Just for the record.

5 **MR. HEARD:** Well, I believe I indicated to the Court  
6 before that it is certainly possible to -- to determine a  
7 number of investigations that have been opened and closed over  
8 the relevant time frame, if that's the type of information that  
9 the Defendants are looking for.

10 But what -- but what we are trying to preserve, your  
11 Honor, is getting into the weeds of the where these  
12 investigations are, how many investigations happened in, you  
13 know, you know, X state versus Y state between, you know, for  
14 what presidential elections or what congressional elections.

15 That kind of information is the type of sensitive  
16 information that could reveal other ongoing investigations that  
17 could, you know, lead into strategies about the Government's  
18 prosecution efforts.

19 And I think again all of that --

20 **THE COURT:** Look --

21 **MR. HEARD:** -- is cabined by prosecutorial  
22 discretion, by investigatory files privileges, all of which  
23 we've asserted, and --

24 **THE COURT:** I think you all need to sit down and talk  
25 about this further, understanding where the Court is coming

1 from on this issue. And as Mr. Clay -- he's the one that's  
2 been speaking here -- said --

3 **MR. HEARD:** Okay.

4 **THE COURT:** -- I think he's reached out to  
5 Mr. Haygood. They're going to try to work it out so that  
6 privileged information, or whatever it may be that needs to be  
7 protected, is going to be addressed.

8 I mean, I don't think you all have even gotten there  
9 regarding this issue. I think that the Government was just  
10 basically saying, "We're just going to produce these two  
11 areas," correct or not?

12 **MR. HEARD:** Well, we've talked a number of times,  
13 your Honor. But we're certainly willing to talk again and try  
14 to come to some agreement. But, you know, we're certainly  
15 willing to do that.

16 **THE COURT:** Mr. Clay?

17 **MR. CLAY:** We've certainly been trying. We've been  
18 trying for about six months to get to --

19 **THE COURT:** And -- and --

20 **MR. CLAY:** -- an agreement, so --

21 **THE COURT:** -- specifically addressing how this --  
22 some of this information can be produced without crossing, you  
23 know, these privileges now that the Government knows kind of  
24 where the Court is coming from on this issue.

25 **MR. CLAY:** Absolutely.

1           **THE COURT:** So --

2           **MR. SCOTT:** For clarity, if -- so if we show them  
3 what we're doing, it would be instructive from I think  
4 everybody's understanding that if they do what Texas is doing  
5 with regard to the discovery, that's generally what probably  
6 the Court would have in mind for the parties to reach?

7           Is that --

8           **THE COURT:** Well, I would like that.

9           **MR. SCOTT:** Okay. I just wanted to make sure --

10          **THE COURT:** But we'll see what you all can do --

11          **MR. HEARD:** Obviously, your Honor, the United States  
12 can't agree to that wholesale, but --

13          **THE COURT:** I know. That's why --

14          **MR. HEARD:** -- (indiscernible) take a look --

15          **THE COURT:** -- you all are going to talk, see what  
16 you all can agree to.

17          **MR. HEARD:** We're happy to take a look at whatever  
18 Texas provides.

19          **MR. CLAY:** Your --

20          **THE COURT:** Okay.

21          **MR. CLAY:** And, your Honor, I'm not trying to cause  
22 more ripples. I just wanted to correct one thing for the  
23 record, and I'm not trying to nitpick.

24                 But we have produced documents related to voter fraud  
25 from the Attorney General's Office. We did that, I believe,

1 with our initial disclosures. They're documents that we  
2 produced in the last litigation.

3 It is also true that we are -- some more documents  
4 are forthcoming.

5 So that's just for the record, your Honor.

6 **THE COURT:** Okay. Well, you all --

7 **MR. CLAY:** Thank you.

8 **THE COURT:** -- can discuss that further. If it's an  
9 issue, you can bring it to the Court.

10 Does anyone else -- any other lawyer who's on the  
11 phone need to, or want to weigh in, or say anything about this  
12 issue?

13 **MR. DERFNER:** This is Mr. Derfner on behalf of the  
14 Veasey Plaintiffs.

15 It's not my issue, but -- and I don't want to waste  
16 the Court's time -- but I'm not sure I see a parallel between  
17 prosecutions or investigations and issues in Texas versus  
18 issues in Wyoming, Vermont, or North Carolina, which is where  
19 the requests from the United States would go to.

20 **THE COURT:** Mr. Clay?

21 **MR. DERFNER:** That's all I want to say on that.

22 **MR. CLAY:** Your Honor, I -- you know, I respect his  
23 opinion, but the Supreme Court in Crawford said that this stuff  
24 is relevant to the claims in this case. And so I think the  
25 Supreme Court disagrees with Mr. Derfner.

1           **THE COURT:** Okay. Anybody else?

2           **(No audible response)**

3           Because I'm getting ready to -- do you all want to  
4 confer -- what's today?

5           **MR. HEARD:** The Government is -- the United States is  
6 happy to confer further with Texas on this to see if we can  
7 reach an agreement --

8           **THE COURT:** Okay.

9           **MR. HEARD:** -- your Honor.

10          **THE COURT:** Then you all will let the Court know if  
11 the Court needs to do anything else on this issue.

12          So I know there was another Motion to Compel filed by  
13 the Defendants. That was just filed today. So I don't know if  
14 you all have -- I'm assuming you all are going to confer  
15 further, or do -- is the Government -- Plaintiffs ready to  
16 address that, or do we need to set another --

17          **MR. SPEAKER:** (Indiscernible) --

18          **THE COURT:** -- hearing later this week or early next  
19 week?

20          **MR. ROSENBERG:** Your Honor, Erza Rosenberg for Texas  
21 NAACP and MALC.

22          We did talk to the State after we saw their Motion.  
23 We told them that we would like to brief it and have -- brief  
24 the -- that part of the Motion as directed to the Veasey  
25 Plaintiffs and to our clients, and that deals with the survey,

1 the respondents' identities in surveys, and we think there's  
2 very strong law on the issue, so we'd like to brief that.

3 And we suggested that we file our brief by Tuesday,  
4 if that's okay with your Honor, and have a conference as soon  
5 thereafter as is convenient for your Honor.

6 **THE COURT:** Okay. Let --

7 **MS. BALDWIN:** And for the United States, your Honor,  
8 this is Ms. Baldwin.

9 We've talked about these issues repeatedly with  
10 Texas, and repeatedly explained that, you know, the contents of  
11 everything that Dr. Ansolabehere has relied on in his report  
12 has been produced. And we would also request to respond in  
13 writing.

14 **THE COURT:** Okay. By Tuesday also?

15 **MS. BALDWIN:** Yes, your Honor.

16 **MR. CLAY:** And, your Honor, the only thing we would  
17 point out is the time line before trial starts. And it's  
18 material we need to get to our experts for them to amend their  
19 reports.

20 **THE COURT:** Okay. Well, I'm going to let them brief  
21 the issue. Provide something to the Court on Tuesday. We can  
22 probably reconvene on Thursday, the 14th.

23 Brandy?

24 **THE CLERK:** Yes, your Honor. 10:30.

25 **THE COURT:** Can you all file that, the briefing, by

1 Tuesday at noon?

2 **MR. ROSENBERG:** Yes, your Honor. Ezra Rosenberg.

3 **THE COURT:** Okay.

4 **MS. BALDWIN:** Your Honor, this is Ms. Baldwin. Yes,  
5 we can do that.

6 **THE COURT:** Okay. Then I'm going to move on from  
7 that.

8 There was still that issue of the D.P.S. records. Is  
9 there any -- I think you all were still conferring on that, and  
10 I wasn't sure if there was anything else for this Court to do  
11 on that Advisory that was filed and then we discussed it some  
12 last week.

13 **MS. BALDWIN:** Your Honor, this is Ms. Baldwin for the  
14 United States.

15 We have taken some additional discovery on that. We  
16 have produced an amended no match list based on both the data  
17 itself; and then once we subsequently also received written  
18 Answers from D.P.S. related to the contents of the meaning of  
19 some of the data, we provided a further update to our no match  
20 list.

21 We are conferring with Defendants and all parties  
22 about some agreed-upon dates for dealing with scheduling issues  
23 around that. But that (indiscernible).

24 **THE COURT:** Okay. So nothing --

25 **MR. ROSENBERG:** Yes, your Honor. And Mr. Rosenberg

1 here, your Honor.

2 And we do have -- we're getting close to  
3 (indiscernible) some changes on -- in this schedule that,  
4 again, do not affect the pretrial or the trial date.

5 There are a couple that I could just float by your  
6 Honor with everyone's consent, which we talked right before  
7 this call, which would change the date for the submission of  
8 the findings of fact -- if this is okay with your Honor -- to  
9 August 22nd instead of August 18th.

10 And to have transcript designations due the same day,  
11 August 22nd.

12 Objections to designations and counterdesignations on  
13 August 27th.

14 And objections to counterdesignations on September  
15 2nd.

16 And, in the meantime, we have a few other dates we're  
17 working on dealing with supplementations and corrections to  
18 expert reports because of the data issues and some other  
19 issues, which we've been -- we talked as recently as 2:00  
20 o'clock this afternoon, and we're going to be continuing  
21 talking over the next couple days.

22 **THE COURT:** Is that agreed to?

23 **MR. CLAY:** The dates are -- the dates are absolutely  
24 fine with the State of Texas, your Honor.

25 The one, I guess, caveat from the State of Texas

1 position, if I heard Ms. Baldwin correctly, she's saying that  
2 the new no matches are exclusively out of the data that was  
3 provided out of the D.P.S.

4 **THE COURT:** Is that --

5 **MR. CLAY:** And that's -- I wanted to make sure of  
6 that at least on the record. There's -- we just got some  
7 notice yesterday of an additional 180,000 people they believe  
8 should be on the no match list. And I guess the source of  
9 where those 180,000 people came from is important to  
10 understanding, I guess, any delays occasioned through the  
11 D.P.S. SNAFU.

12 **MS. BALDWIN:** Your Honor, and to be clear, the  
13 additional supplementation the United States provided was based  
14 off written answers that D.P.S. provided in a 30(b)(6) that was  
15 taken as a result of the data error. And the changes affect  
16 both records produced initially in February as well as records  
17 that were produced in the July 23rd supplement that had not  
18 been previously provided.

19 **MR. CLAY:** And in order to avoid any more complaints,  
20 I guess, we answered 303 questions that they submitted to us  
21 last week by last Friday. Many of them had nothing to do with  
22 the data SNAFU. They were an explanation of some additional  
23 information on some status issues. It looks like they may have  
24 gone back in and reworked some numbers, and added some things,  
25 and just amended the report.

1           That's only important, because from our expert's  
2 standpoint, they provided the report and response to that  
3 report that existed a month ago, or I guess six weeks ago.

4           And so what we wanted to make sure of is that if they  
5 come back and we figure out we need to file an amended report  
6 to the Court, or to the other side, that everybody understands  
7 the basis of that.

8           **THE COURT:** Okay.

9           **MR. CLAY:** And so that's -- I guess the ask is that  
10 -- well, I guess the ask is that we're working on trying to do  
11 a simultaneous, perhaps, reports based upon the D.P.S. SNAFU  
12 that would -- I think that's the State of Texas position for --  
13 which would be, I guess, Friday a week, and I think that's --  
14 that's the 15th?

15           **THE COURT:** Yes. Yes.

16           **MR. CLAY:** The 15th. That would be the proposal of  
17 Texas for issues of experts related to that new information, so  
18 that everybody has had it for a significant of time.

19           **THE COURT:** Let me hear from the Plaintiffs on that.

20           Is that fine, Ms. Baldwin and the rest of the  
21 Plaintiffs?

22           **MS. BALDWIN:** Your Honor, we -- this, that -- the  
23 issue that Mr. Scott is mentioning, the simultaneous, was  
24 literally just raised an hour before the call with the Court  
25 and we just need to talk --

1           **THE COURT:** Okay. Well, then you all talk further on  
2 that issue.

3           **MS. BALDWIN:** Thank you, your Honor.

4           **THE COURT:** All right.

5           **MR. DERFNER:** Your Honor, this is Mr. Derfner.

6           There's a side issue on the -- related to the SNAFU.  
7 Am I on voice or --

8           **THE COURT:** Yes, you're good.

9           **MR. DERFNER:** Okay. And this is one where we have  
10 agreement. We've talked with Mr. Scott about the expenses that  
11 we're going to run into with Dr. Herron for revising his data  
12 in his report because of the new data that came out because of  
13 the SNAFU, and I think we have an agreement there.

14           So we're going to be presenting an Order  
15 (indiscernible) State and send it to (indiscernible) say they  
16 agree to pay his reasonable expenses based on the agreed rate,  
17 and that we'll submit an invoice to them showing what Dr.  
18 Herron had to do on this and a total amount of payment.

19           And they, of course, would have the right to review  
20 the invoice, and assuming if the amounts, the time is agreed  
21 to, then they'll go ahead and pay it.

22           **MR. CLAY:** And, your Honor, that is correct. We're  
23 trying to make sure that, to the extent somebody has been --  
24 produced something that we, the State, properly steps up and  
25 takes care of that bill.

1           In order to get something like that paid, we have the  
2 -- have to have the obligation of looking through the bill to  
3 make sure it relates to that, and then an order from the Court  
4 facilitates the payment of that bill so that the comptroller  
5 will actually write a check for it.

6           **THE COURT:** Okay.

7           **MS. BALDWIN:** Your Honor, this is Ms. Baldwin.

8           If I could, I'd like to bring up one issue that we've  
9 been attempting to resolve with Texas that we've been unable  
10 to, related to expert disclosures that has a very pressing time  
11 line.

12          **THE COURT:** Okay. Go ahead.

13          **MS. BALDWIN:** Your Honor, in Dr. Hood's report that  
14 Texas filed last Friday, Dr. Hood relies on some additional  
15 turnout data from TEAM, the Texas voter registration database,  
16 from 2014, which was after the date of the snapshot of the TEAM  
17 data that was previously produced to the United States.

18          You know, again, that's data from the Secretary of  
19 State that Dr. Hood is exclusively relying on in his report,  
20 and we've requested that Texas produce that to us. We  
21 requested last Friday that any data go ahead and be produced,  
22 and we didn't receive it.

23          When we read the report and realized that there was  
24 TEAM data that we hadn't received, we went ahead and requested  
25 it. That's, you know, data that is clearly discoverable under

1 Rule 26(e)(2) in terms of facts that are included and relied on  
2 in the expert's report.

3 Texas, in response, sent the United States  
4 (indiscernible) data that is literally from a party Defendant a  
5 public information request form, and told us that we could send  
6 the public information request form to the Texas Secretary of  
7 State to receive data that their expert is explicitly relying  
8 on.

9 That public information request form on its face has  
10 a 15-day turnaround (indiscernible) --

11 **THE COURT:** Okay. Well, let's figure that out.

12 Mr. Scott, that doesn't make sense, if that, in fact,  
13 is what happened.

14 **MR. SCOTT:** Well, and would -- so did we tell them  
15 that the information is publically available? Absolutely,  
16 because that's what we were told --

17 **THE COURT:** But you have it, or your expert has it --  
18 somebody has it where it can be turned over --

19 **MR. SCOTT:** Yes, and that's --

20 **THE COURT:** -- because of the --

21 **MR. SCOTT:** And so that we're clear, that's the basis  
22 of our Motion to Compel that we've now set up for briefing for  
23 Tuesday. And so --

24 **THE COURT:** Well --

25 **MR. SCOTT:** -- if we could do this on a briefing

1 schedule, we would absolutely love to, because this is --

2 **THE COURT:** Well, that's fine but --

3 **MR. SCOTT:** -- this is exactly --

4 **THE COURT:** -- that's exactly --

5 **MR. SCOTT:** -- apples to apples --

6 **THE COURT:** -- what I was thinking when we're talking  
7 about what experts are -- have relied on. When I just briefly  
8 read this latest Motion to Compel, that's exactly what that  
9 resolves.

10 So I'm just going to let you all know, you know,  
11 wherever the Plaintiffs want to go, the Defendants are probably  
12 going to be entitled to go. You know, vice versa -- whatever  
13 it may be.

14 But I don't think we should be telling people, "Well,  
15 go do a public request for information," or whatever it is, if  
16 you have the information, because of the time lines we're  
17 operating on.

18 **MR. SCOTT:** And --

19 **THE COURT:** That's another thing you're saying  
20 they're not entitled to it, like they're saying you're not  
21 entitled to some things, and then maybe you need to brief it,  
22 but it --

23 **MR. SCOTT:** We've received links --

24 **THE COURT:** If you have it and it needs to be  
25 produced, don't send them to do the public request.

1           **MR. SCOTT:** We received links to the locations, and  
2 so we went a step above. We didn't do the public links  
3 available. And I think it goes back to the other thing. We're  
4 attempting to get Catalist documents, which is one of their  
5 experts, to find out the underlying -- where he gets his  
6 presumptions on the racial makeup of the state, why it's  
7 likely, unlikely, what the percentage a person is, who they  
8 believe they are -- all of that, that's one of their experts,  
9 and they've told us it's proprietary. It's not available from  
10 that standpoint.

11           **THE COURT:** Okay.

12           **MR. SCOTT:** It's in their expert's custody.

13           **THE COURT:** So you're --

14           **MR. SCOTT:** They have it.

15           **THE COURT:** -- saying what they want, they shouldn't  
16 have, and you're going to brief on it as to why they shouldn't  
17 have it?

18           **MR. SCOTT:** That -- oh, yes. We'll absolutely make a  
19 legal argument that it's publically available to all parties --

20           **THE COURT:** Well --

21           **MR. SCOTT:** -- equally available to all parties.

22           **THE COURT:** But that's kind of -- do you get what I'm  
23 saying?

24           **MR. SCOTT:** I get what you're saying --

25           **THE COURT:** If you have it --

1           **MR. SCOTT:** I -- and, Judge, I --

2           **THE COURT:** -- give it to them. And --

3           **MR. SCOTT:** I --

4           **THE COURT:** -- you're not going to object to it, and  
5 your expert has it, and you're not saying they shouldn't have  
6 it for whatever reason. Why are you going to make them go  
7 through hoops?

8           **MR. SCOTT:** I guess, your Honor, it's -- what we're  
9 faced with on the other side -- and I've practiced law a long  
10 time in this state and done stuff and stepped the extra mile  
11 for folks all the time. And in this case, we've been told  
12 repeatedly we can't have something. I thought that --

13           **THE COURT:** Well, and I'm going to address that. But  
14 I don't play like that.

15           **MR. SCOTT:** I -- but --

16           **THE COURT:** You know, I don't play --

17           **MR. SCOTT:** But we're giving them --

18           **THE COURT:** -- "Well, go through some hoops to get  
19 this, that, and the other." I don't do that well, I should  
20 say.

21           But I'm going to address what they're trying to keep  
22 from you when they brief it, and we're going to talk about it  
23 next week.

24           **MR. SCOTT:** But a week delay in that gives it -- a  
25 week advantage to their experts, is I guess the problem on

1 this. And we're finding --

2 **THE COURT:** Okay. If you want --

3 **MR. SCOTT:** And, your Honor, I'll get it to them --

4 **THE COURT:** -- to make that argument next week about  
5 how you're just going to make them go through the public  
6 information -- you know, go right ahead.

7 **MR. SCOTT:** I -- no, I --

8 **THE COURT:** Go right ahead.

9 **MR. SCOTT:** Your Honor, I -- I take your words of  
10 wisdom and I will follow your words of wisdom. I -- but I  
11 would also ask that the Court ask the folks on the other side  
12 to abide by that golden rule, because I --

13 **THE COURT:** I have been trying to tell them for a  
14 long time that generally what's good for one is good for the  
15 other, and sometimes they don't listen.

16 But, you know, we are where we are, and I got your  
17 number on all sides here, and we can only trudge ahead.

18 **MR. SCOTT:** Okay, your Honor.

19 **MS. BALDWIN:** Your Honor -- thank you, your Honor.  
20 This is Ms. Baldwin.

21 Just one more issue related to the expert disclosures  
22 in addition to this information (indiscernible) Texas Secretary  
23 of State, there's also provisional ballot data that Dr. Hood  
24 collected from the states of South Carolina and Mississippi  
25 that were requested that it's not in our possession, which the

1 same argument that it was publically available is we were  
2 welcome to go ask Mississippi and South Carolina  
3 (indiscernible).

4 **THE COURT:** Well, same thing I already said.

5 **MR. SCOTT:** So, your Honor, this brings up something  
6 I think we're -- the Court is going to run into at the trial.  
7 And it came up and it was a huge issue in the last trial.

8 There was a thing called the "no match list." And  
9 right now we're dealing with this -- this program that people  
10 come back and they say, "Well, you've got the data." Well,  
11 there's not a specific list that people print out. And I  
12 understand this list may have 800,000 names on it. But at some  
13 point in time, the parties need to get into an agreement over  
14 what the no match list is.

15 It is a burden that is on the Plaintiffs in this case  
16 to show that there is a no match. It's one of the  
17 preconditions to even get to the point where they can start  
18 making a legitimate argument about the case.

19 It seems like it would be a great point at this point  
20 for the parties' experts to get together and agree this is the  
21 no match list, so we're comparing apples to apples.

22 **THE COURT:** Okay.

23 **MR. SCOTT:** What's going to end up happening is  
24 people are going to say, "Well, you've really got the wrong  
25 information there. That is really sliced and diced this other

1 way."

2           **THE COURT:** Okay. Well, let me ask, who is going to  
3 speak on that for the plaintiffs?

4           **MS. BALDWIN:** Your Honor, this is Ms. Baldwin for the  
5 United States, and I'm happy to speak to that.

6           We have repeatedly represented that the data that  
7 Dr. Ansolabehere has relied on regarding (indiscernible) --

8           **THE COURT:** Okay. I'm sorry. We can't hear you.  
9 Maybe slow down and speak up.

10           **MS. BALDWIN:** Sure. I repeatedly explained to Texas  
11 that the data that Dr. Ansolabehere has relied on in his report  
12 regarding the no match data has been produced to the State of  
13 Texas in its entirety with a code book that explains exactly  
14 how to reproduce --

15           **THE COURT:** So we're all working off one no match  
16 list. Is that what you're saying?

17           **MS. BALDWIN:** Yes, your Honor. And, in fact, to  
18 quote from Dr. Hood's report (indiscernible) this no match list  
19 (indiscernible) he was able to replicate it in almost identical  
20 form from the aggregate numbers presented in Dr. Ansolabehere's  
21 report. He identifies the other files which Professor  
22 Ansolabehere used in his analysis.

23           There's no question that Dr. Hood, Texas's own  
24 expert, understands what the no match is and has been able to  
25 replicate it. We've produced the data that Dr. Ansolabehere

1 has relied on --

2           **THE COURT:** Okay. Hold on, because my question was  
3 so we're all working on one no match list.

4           Mr. Scott, was that your issue, that you don't know  
5 what that is -- or which one? Or what --

6           **MR. SCOTT:** Your Honor, we -- from our position, I  
7 promise you I was not bringing this up as an issue to you. I  
8 brought it up -- and we've brought it up a number of times to  
9 D.O.J.

10           If we really, heart of hearts, thought that the  
11 lawyers had a list that we could go to our -- whatever witness  
12 is sitting up there and saying, "You've got John Smith on here,  
13 and you say that he is -- does not have a proper ID to vote, we  
14 found that he has a driver's license."

15           What we don't -- that's great. We're not at that  
16 point.

17           What we've done is backtrack, and try and match up  
18 numbers, and go through the code that they did not provide us a  
19 data dictionary in order to be able to do. So we've made some  
20 assumptions. Our expert has made some assumptions. And we  
21 have spent an enormous amount of -- a number of sleepless  
22 nights trying to figure out where they got to where they got --  
23 all unnecessary, because each one of these folks has a voter ID  
24 number that someone could provide that list as a separate,  
25 standalone document that we could all be working off of.

1           In fact, the document they sent us said the --  
2 something like the "U.S.A's no match list." What it had was 13  
3 million names on it, which is the same number of people that  
4 they got on the TEAM database from the Secretary of State's  
5 Office in Texas.

6           And so we're -- it's a semantics game. There should  
7 be a separate file that is all by itself that there is no  
8 mistake that the State of Texas says these are the 300,000, or  
9 200,000, or 100,000 names on its no match list, and the party  
10 Plaintiffs have a list that has 600 or 800,000 names on their  
11 list. And then at least we can be able -- be assured -- or the  
12 Court can be assured that we're arguing about the same thing.

13           **MS. BALDWIN:** Your Honor, this is Ms. Baldwin.

14           The list -- when Mr. Scott represents 13 million,  
15 that's because we've provided them a complete list that says,  
16 "Did you match to this form of ID? Did you match to that form  
17 of ID? Are you an overall match for each and every voter in  
18 the State of Texas?"

19           So it is both a complete match list and a complete no  
20 match list.

21           It -- you know, the example we talked about on the  
22 phone yesterday, a peanut butter and jelly sandwich or a BLT,  
23 it has all of the complete ingredients that go into something,  
24 and Texas is asking us, "Well, make it easier for us. Cut the  
25 data in a different way. Have your expert go and make

1 something else."

2 The point is the document that our expert relied upon  
3 is the document that we've already produced. That's the data  
4 set that's been produced.

5 It -- there's not some other draft that he's relying  
6 on. He's coming to all of his conclusions based on that data  
7 set, which their expert, Dr. Hood, has, in fact, been able to  
8 replicate.

9 We are not obligated to prepare, you know, additional  
10 helpful cheat sheets for the State that makes their job easier.

11 Our expert compiled -- compiled the data in a certain  
12 way that's relied upon in District Court, and that's what we've  
13 provided.

14 **MR. SCOTT:** We're going to provide them the documents  
15 that the Court has asked us to provide -- I mean not asked, but  
16 has given the wisdom to do so.

17 We're going to give them the stuff from Dr. Hood that  
18 he's relied upon in his report.

19 And if the Court believes we're best to go on a path  
20 where there's not a single list that there's no --

21 **THE COURT:** Well, that's not --

22 **MR. SCOTT:** -- mistake that these are --

23 **THE COURT:** -- going to be good for the Court. But,  
24 you know, that again goes to how parties are going to try this  
25 and how that's going to play into the evidence, I guess, and

1 how the Court sees it.

2           **MR. SCOTT:** And so the -- we fast-forward, at least,  
3 in the crystal ball a little bit to the trial, I anticipate  
4 there is going to be an enormous amount of going line by line  
5 on that that could otherwise have been taken care of early on.

6           **THE COURT:** And I'm not going to appreciate that one  
7 bit, because it's not just about you all being opponents, but I  
8 am the fact finder here. So if you can make -- you, and I'm  
9 not saying you, just the State, but if both the Plaintiffs and  
10 the Defendants can make it easier for the fact finder, then so  
11 much better for you all.

12           And if not, you know, then not.

13           **MS. BALDWIN:** Your Honor, this is -- this is  
14 Ms. Baldwin.

15           And I just want to clarify that Mr. Scott appears to  
16 have pivoted a little bit in his presentation to the Court,  
17 where previously Mr. Scott has been assuming in our  
18 negotiations that we have such a preexisting list that we're  
19 not providing. And we've explained, no, that what  
20 Dr. Ansolabehere relied on is what Dr. Ansolabehere relied on.

21           If Mr. Scott is making another proposal that the  
22 parties come up with some kind of different thing, that's --  
23 that doesn't already exist, that's not something that Mr. Scott  
24 has spoken with us before.

25           **THE COURT:** Well --

1           **MS. BALDWIN:** And I would just point out that for  
2 Dr. Hood, we haven't received (indiscernible) --

3           **THE COURT:** Okay. Let me just say, if you all are  
4 willing to do that, then so ordered by the Court.

5           **MR. SCOTT:** Right.

6           **THE COURT:** Because I can only see where that would  
7 be helpful to the Court.

8           **MR. SCOTT:** Right.

9           **THE COURT:** Any comment on that?

10          **MR. SCOTT:** That's right with the State of Texas,  
11 your Honor. We're --

12          **THE COURT:** Ms. Baldwin?

13          **(No audible response)**

14          Ms. Baldwin?

15          **MS. BALDWIN:** With the understanding that the list  
16 that we've already produced is the list that Dr. Ansolabehere  
17 has relied on. We're certainly happy to talk with the State of  
18 Texas about what that final list is --

19          **THE COURT:** Well --

20          **MS. BALDWIN:** -- (indiscernible) in some way that  
21 makes it easier for the fact finder.

22          **THE COURT:** Talk about it. And I think everyone  
23 should be on board about that, unless other counsel wants to  
24 discuss that further.

25          **(No audible response)**

1 I don't hear anything. So can I move on from that?

2 **MR. SCOTT:** Yes, ma'am.

3 **THE COURT:** Okay. I know you all were conferring on  
4 a couple other issues. I just -- every time we meet, I try to  
5 see what motions can be knocked out.

6 So I don't know if there's anything further on the  
7 Defendants' Motion to Compel the Plaintiffs, both Ortiz Lupe  
8 (phonetic) and Veasey-LULAC, Answers on some Interrogatories.

9 I believe I still have that as you all conferring.

10 **MS. WOLF:** Yes, your Honor. This is Lindsey Wolf for  
11 the Defendants.

12 Unfortunately, I just haven't had a chance to talk  
13 with them about that, so --

14 **THE COURT:** Okay. I --

15 **MS. WOLF:** -- we haven't resolved it, but that  
16 doesn't necessarily mean that it won't be. We just need some  
17 time --

18 **THE COURT:** Then I --

19 **MS. WOLF:** -- to talk with them.

20 **THE COURT:** Okay. I'm not going to discuss that.

21 Then the only other thing I think you all were going  
22 to continue discussing was maybe Dallas's Motion to Participate  
23 as an Amicus. I don't know if there's anything else that needs  
24 to be addressed there.

25 **MR. DUNN:** Your Honor, this is Chad Dunn on behalf of

1 the Veasey-LULAC Plaintiffs.

2 We, in getting caught up on all the multiple other  
3 issues, haven't gotten back with the State to talk about that.  
4 I think it's something we're going to work out, so if we can  
5 postpone it --

6 **THE COURT:** That's fine.

7 **MR. DUNN:** -- that would be great.

8 **THE COURT:** Okay. Anything else from the Plaintiffs?

9 **MR. DERFNER:** Yes. This is Mr. Derfner, your Honor.

10 **THE COURT:** Yes.

11 **MR. DERFNER:** And this is just -- I just want to let  
12 you know about another issue that I think we're probably going  
13 to resolve. And that has to do with we have asked the State  
14 for -- to compensate the expert witnesses for deposition-  
15 related expenses, including time and expenses, for appearing at  
16 the depositions, for travel, and for a reasonable amount of  
17 time to prepare for the deposition in line with the rule and I  
18 think in line with the Court's Order in a case called  
19 (indiscernible) against Wells Fargo.

20 And we haven't had a definitive response from the  
21 State, but I believe we'll be able to work that out. But I  
22 just wanted to --

23 **THE COURT:** Okay. You all --

24 **MR. DERFNER:** -- (indiscernible).

25 **THE COURT:** -- can discuss that further. I just --

1 if you all don't have specific agreements, then I just follow  
2 the rules --

3 **MR. SCOTT:** And -- and --

4 **THE COURT:** -- as is. But sometimes the parties come  
5 to an agreement to pay their own, or whatever it may be.

6 **MR. SCOTT:** And we just -- I think they brought it up  
7 now, and what the -- the one issue that they've I think listed  
8 16 different experts and provided 16 different expert reports,  
9 and what we don't want to encounter is somebody that's  
10 irrelevant to the case that they just did as a delay tactic,  
11 doesn't show up to testify at trial, because we're doing -- I  
12 think the Court has ordered Daubert Motions to take place after  
13 the testimony of the witness here in trial.

14 And so we're not really going to have the guidance  
15 about whether it's relevant or not to the case until after that  
16 point. So I would urge the Court, I guess, to hold off on  
17 deciding the payment of how much is relevant to that testimony  
18 until after the witness has appeared and testified, and the  
19 Court has made a decision that their testimony is relevant.

20 **MR. SPEAKER:** We don't --

21 **MR. SCOTT:** I think that was the take-away of that  
22 case we -- they provided me that you had.

23 **THE COURT:** Yeah. I mean, that's fine. If you all  
24 -- we're just going to follow the rule. Certainly, at the end  
25 of the trial, or whatever it may be, this Court may have to

1 address some issues regarding costs and expenses.

2 Correct, Mr. Derfner?

3 **MR. DERFNER:** Correct.

4 **THE COURT:** Okay. What -- anything else from --

5 **MR. DERFNER:** (Indiscernible).

6 **THE COURT:** -- the Plaintiffs?

7 **MR. HEARD:** Your Honor, Brad Heard for the United  
8 States.

9 Just to -- just to make the Court aware, we are  
10 preparing to file a Motion to Strike today related to a portion  
11 of the Defendants' Answer.

12 In addition, we are in discussions with the  
13 Defendants regarding Requests for Admissions that we believe  
14 have not been properly answered. We're hoping to hear back  
15 something on that today. And if we're not able to resolve  
16 that, that Motion will also be filed. And we anticipate we  
17 would like to have it heard by the Court at whatever Status  
18 Hearing is scheduled for next week.

19 **THE COURT:** Okay. Have you all discussed the Motion  
20 to Strike, conferred on that also?

21 **MR. SCOTT:** I've not visited with him.

22 **THE COURT:** Okay. You all need to just talk about  
23 everything before you start filing matters, because sometimes  
24 some --

25 **MR. HEARD:** We have --

1           **THE COURT:**   -- some --

2           **MR. HEARD:**   We have conferred on the RFAs.  We did  
3 confer on the Motion to Strike (indiscernible) rules that  
4 requires referral, but we're certainly happy to talk with him  
5 about it if the Court wishes.

6           **THE COURT:**   No, I wish that you all always talk and  
7 confer, because every once in a while, you all do come to  
8 agreements.

9           So --

10          **MR. HEARD:**   Happy to try, your Honor.

11          **THE COURT:**   Yeah, okay.  Anything else from the  
12 Plaintiffs?

13          **(No audible response)**

14          Then anything from the Defendants?

15          **MR. SCOTT:**   There's still the pending Motion to  
16 Compel of the House reps, not --

17          **THE COURT:**   Right.

18          **MR. SCOTT:**   Not the senator one, because I think  
19 that's the one we're waiting for Ms. London to come back from  
20 England.

21          **THE COURT:**   But I think I was -- I think the Court  
22 was taking the position I was going to address them --

23          **MR. SCOTT:**   Wait on both of them --

24          **THE COURT:**   -- together.

25          **MR. SCOTT:**   -- at the same time.  Okay.

1           **THE COURT:** Since they involve really the same thing.

2           And do we know, Brandy? Did we set that? Or --

3           **MR. SCOTT:** And, again, to the extent that ends up --

4 I know we had testimony develop yesterday in one of their  
5 experts that he admitted helping Senator Gallegos come up with  
6 talking points early on in 2005 throughout the voter ID  
7 process.

8           I don't know what other documents are out there. I  
9 know that it's part and parcel of their experts' opinions, at  
10 least some of this. And so that's the other, I guess, urgency.

11           And as long the Court, again, is aware, so if we file  
12 such a Motion to Amend our expert report based upon this newly  
13 discovered evidence, that --

14           **THE COURT:** Did we set it?

15           **THE CLERK:** Your Honor, Ms. London returns from out  
16 of the country tomorrow, so it can be addressed at next week's  
17 hearing on the 14th.

18           **THE COURT:** Okay.

19           **MR. SCOTT:** Okay.

20           **THE COURT:** So we'll do that.

21           **MR. SCOTT:** Thank you.

22           **THE COURT:** Anything else, counsel?

23           **(No audible response)**

24           If you have nothing further, then you can be excused.  
25 Thank you.

1                   **MR. SCOTT:** Thank you, your Honor.

2                   **MS. BALDWIN:** Thank you, your Honor.

3                   **MR. SPEAKER:** Thank you, your Honor.

4                   **MR. SPEAKER:** Thank you, your Honor.

5                   **(This proceeding was adjourned at 4:03 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

August 8, 2014

TONI HUDSON, TRANSCRIBER